IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.980 OF 1991

Bhagwan Rangu Jadhav, age major]
occupation Agriculturists, R/o]
Khanapur, Post Shendur Lane, Tal] ... Appellant
Wai, District Satara.](Org.Opp.No.5)

versus

1. Shri Manihar Devanand Kotiyan]
   Age 25, Occ.Nothing, Residing]
   at Pais Compound, Matadakani]
   Cross Road, Baloor, Mangalore]

2. Jagannath Kalawa Acharya,]
   Age 30, Driver, Residing at]
   Santhakatta, Kalyanpur -]
   Chechermarpeth, Udupi]

3. Bharat Tourists, through its]
   Proprietor, Babu K Salian,]
   age 40, Occ.Business,]
   Resident of Maskewala]
   Building, 1st floor, Room No.]
   No.7, Ibrahim Rahamatulla]
   Road, Bhendi Bazar, Bombay-3]

4. Shri Vijaykumar Moonraj,]
   age 35, Occ. Business,]
   resident of 223, Nanak Nagar]
   Jammu.]

5. United India Insurance Co.Ltd] ... Respondents
   having its registered office] (R.No.1 Orgi
   at 24, Whites Road,] Petn. Ors.Opp
   Madras 600 014.] Nos.1 to 4)

Mr.Amol Mhatre i/by Mr.P.K.Dhakephalkar for the appellant.

Mr.G.H.Keluskar i/by Mr.N.V.Walawalkar for Respondent No.3.

Mr.Dilip Mahadik i/by Mr.S.R.Singh for Respondent

No.5.

CORAM : ANOOP V.MOHTA, J.

DATED : 03rd September 2007.

JUDGMENT :

1. Heard the learned counsel appearing for the appellant - original opponent No.5, Respondent No.3 - original opponent No.2 and Respondent No.5 - original opponent No.4.

2. The appellant, who was the owner of the tractor with trolley in question, has challenged the impugned award dated 12th November 1990 passed by the Member, M.A.C.T. Satara whereby the appellant along with others have been directed jointly and severally to deposit Rs.1,30,000/- with 12% p.a. interest from the date of filing of the petition (i.e.19.4.1996) till realisation.

3. By the said Award, the tribunal dismissed the claim Petition against Opponent No.2. By an order dated 22.11.1994, the First Appeal also stood dismissed against original opponent No.1

i.e. Respondent No.2 herein, who was the driver of luxury bus.

. By an order dated 22.3.2006, the matter also stood dismissed against original opponent No.3 - i.e. Respondent No.4 herein, who was the owner of luxury bus. Therefore, there is no challenge of any kind made by the driver and the owner of the luxury bus i.e. Respondent Nos.2 and 4.

5. Before the tribunal, there were in all three claim petitions. Petition No.100 of 1986 was filed by the owner of the tractor Bhagwan Jadhav for the damages caused to his tractor. Petition No.101 of 1986 was filed by the parents of Balu (helper) to claim compensation. Petition No.67 of 1986 was filed by the injured victim Manohar Kotiyan i.e. Respondent No.1 herein to claim compensation. The present appeal pertains to MACP No.67 of 1986 filed by the injured victim Manohar Kotiyan wherein the present appellant was the owner of the tractor.

6. The accident in question took place near village Joshi-Vihir on Pune-Bangalore Highway at

about 1 a.m. midnight on 11.12.1985. That was a head-on collusion between the luxury bus bearing No.JKQ-8123, owned by Opponent No.3- Vijaykumar, and tractor MX-8383 with trolley MTL 9041, owned by Bhagwan Jadhav i.e. the appellant herein. Manohar Kotiyan - the traveller of luxury bus, received serious injuries in the said accident. Hence he filed a claim petition on 19.4.1986 and prayed for compensation to the tune of Rs.2,50,000/- against all the opponents.

7. After considering the evidence led by the parties, the tribunal has held that the accident was due to composite negligence of driver of luxury bus, i.e. opponent No.1, and driver of tractor with trolley owned by Opponent No.5 - the appellant herein. The claimant sustained permanent injury and as incurred medical expenses, the tribunal awarded compensation of Rs.1,30,000/- against all, excluding opponent No.2 as referred above.

8. Except the appellant - the owner of the tractor with trolley, no one has challenged the award on any count. Therefore, in view of this fact itself, the challenge at the instance of the

owner of tractor with trolley is on a very feeble foundation.

9. The learned counsel appearing for the Insurance Company basically contended that in the case of **Oriental Insurance Co. Ltd. v/s. Sunita Rathi and others, 1998 ACJ 121,** as there is no challenge raised even by the Insurance Company; the owner of the other vehicle i.e. luxury bus and/or; the other opponent as referred to above, the grounds raised in the first appeal have no force; there is no case made out by the appellant to interfere with the findings so arrived at by the tribunal.

10. The learned counsel for the Insurance Company further contended, based on the judgement of the Supreme Court in the case of **Bijoy Kumar Dugar v/s. Bidya Dhar Dutta and others, (2006) 3 SCC 242,** that in such a case of head-on collusion implied contributory negligence and rashness on the part of both the vehicles just cannot be over looked. Therefore, the deduction of 50% damages on the said inference of contributory negligence is sustainable. In the present case, based upon the said principle of contributory negligence, as

admittedly, there was head-on collusion, the grant of award against the opponents including the appellant, needs no interference. It is within the frame work of law as well as the record.

11. The submissions of learned counsel appearing for the appellant based on the testimonies of the witnesses that it was high speed bus which caused basic accident, though the tractor with trolley was moving in a moderate speed. After perusal of the evidence, there is material on record to show that the truck had no head lights (Manohar Kotian-PW 1). He has further stated that both the drivers were at fault; due to their negligence the accident took place. In para 13 of his cross examination, he denied the suggestion that the tractor was not at all in fast speed. So far as injuries suffered by the claimant, there is no cross examination at all on behalf of the opponents. Rest of the testimony in cross examination remained unshattered. Through this testimony, the claimant substantiated his case of permanent injuries, income and resulting losses. The claimant examined P.W.2 Babu Saliyan to prove his

income.

12. The learned counsel for the appellant strongly relied upon the evidence of Bhagwan Jadhav - the appellant to show that the truck was going in slow speed by left side of the road, but suddenly one luxury bus came in fast speed and gave the dash to the tractor. The claimant, in his evidence particularly in para 3, has stated that suddenly one tractor came from the opposite side and gave the dash to their bus. But the testimony of claimant, who actually sustained injuries because of this accident, just cannot be overlooked as he was a person who, apart from sustaining injuries, had actually witnessed the speed and the incident. The supportive testimony of Manohar Kotiyan P.W.1, therefore, cannot be overlooked.

13. The testimony of Sudam Naikwadi (PW 2), in the facts and circumstances and in view of the testimony of claimant, is insufficient to interfere with the findings given by the tribunal.

14. The reasonings as arrived at by the

tribunal are based on testimony of the witnesses as well as material placed on record and, therefore, cannot be said to be perverse. Though the tribunal held that the luxury bus was in speed, but considering the facts and circumstances of the case, the tribunal has rightly come to the conclusion that in view of the undisputed position that there was head-on collusion and as there was no head lights on the tractor, both the drivers were equally responsible for causing the accident. The reasonings given by the tribunal for granting the compensation on the basis of composite negligence are, therefore, correct.

15. There is no challenge raised or there is no agitation so far as compensation on the part of opponents are concerned. The material placed on record is sufficient to grant compensation as awarded by the tribunal in all respects including special damages as well as general damages.

16. In the result, the judgment of the tribunal needs no interference. Hence the appeal fails. It is dismissed accordingly with no order as to costs.

[ANOOP V.MOHTA, J.]